IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.K.MOHANAN

WEDNESDAY, THE 17TH OCTOBER 2007 / 25TH ASWINA 1929

Crl.MC.No. 3234 of 2005()

PETITIONER:

VARGHESE MATHEW,
PUTHENPURACKAL HOUSE, VAKAYAR P.O., KONNI.

BY ADV. SRI.V.PHILIP MATHEW

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. P.V.PHILIPOSE, PLAVUNILKUNNATHIL,
ELANTHUR EAST, ELANTHUR VILLAGE,
PATHANAMTHITTA.

BY ADV. SRI.S.MUHAMMED HANEEFF
SRI.R.KRISHNAKUMAR (CHERTHALA)
SR. PUBLIC PROSECUTOR SMT. M.K.PUSHPALATHA

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 17/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.K.MOHANAN, J.

Crl. M. C. NO. 3234 OF 2005

Dated this the 17th day of October, 2007

O R D E R

Petitioner herein is the 2nd accused in Crime No.283/04 of Konny Police Station for the offence under Section 420 r/w Section 34 IPC. He approached this Court by filing the above Crl.M.C with a prayer to quash Annexure 3 final report in Crime No.283/04 of Konny Police Station.

2. The specific case of the petitioner is that purely on a civil dispute, the 2nd respondent herein had filed Annexure 2 complaint dated 15.9.04 before the Judicial First Class Magistrate Court-II, Pathanamthitta, which was forwarded to the Konny Police Station under Section 156(3) Cr.P.C. Pursuant to the receipt of the complaint, they have registered Crime No.283/04 for the offence under Section 420 r/w Section 34 IPC. Annexure 1 is the copy of the FIR. After investigation, the police has filed Annexure 3 final report on the basis of which C.C.64/05 has instituted in the court of Judicial First Class Magistrate Court-II, Pathanamthitta. Along with the above Crl.M.C, petitioner has also produced Annexure 4 mahazar

prepared by the police after inspecting the agreement, which is referred to in Annexure 2 complaint. It is the above Annexure 3 final report, which is sought to be quashed in this proceedings.

3. I have heard the learned counsel for the petitioner as well as the 2nd respondent and also the learned Public Prosecutor.

4. The learned counsel for the petitioner took me through Annexure 1 FIR, Annexure 2 complaint, Annexure 3 final report and Annexure 4 mahazar and submitted that on a perusal of the above records at the most what disclose is that there is a civil dispute between the accused and the defacto complainant.

5. I have gone through Annexure 2 complaint wherein the grievance of the defacto complainant is that on 19.3.04 at about 3 p.m. an amount of Rs.7,00,000/- was received by the 1st accused from the defacto complainant and entrusted the same with the 2nd accused. The above transaction was taken place in the house of the accused. However, the case of the defacto complainant is that at the instance of the 1st accused the 2nd accused had executed an agreement and given to the complainant. Further, grievance of the complainant is that the accused did not pay back the loan amount within the agreed period of three months. It is also the case of the

complainant that though the accused have assured on several times that the amount will be paid back and the transaction will be closed, the same was not materialised. It is also stated that the complainant was put in financial crisis due to the non-payment of the loan amount by the accused. Towards the end of the complaint, the complainant further stated that the loan which was received from the complainant was used for meeting the needs of the accused and they did not repay the same deliberately within the period agreed by them and thereby the complainant was cheated and the transaction resulted in heavy loss to the complainant and profit to the accused.

6. Putting stress on the above passages contained in the complaint, learned counsel for the petitioner submitted that the ingredients of Section 420 is not attracted. On the other hand, it shows that the transaction was purely civil in nature and the attempt of the complainant was to convert it into a criminal case and the police without conducting a proper investigation launched Annexure 3 final report implicating the petitioner as one of the accused. Hence the counsel submits that the whole proceedings initiated against the petitioner pursuant to Annexure 1 FIR, Annexure 2 complaint, Annexure 3 final report as well as the proceedings pending before

the court below are liable to be quashed.

7. Per contra, learned counsel appearing for the 2nd respondent as well as the learned Public Prosecutor submitted that the police after investigation came into a conclusion that the 2nd accused as well as the other accused have committed the offence punishable under Section 420 r/w Section 34 IPC and hence the petitioner's prayer cannot be allowed at this stage and therefore it is submitted that the Crl.M.C is liable to be dismissed.

8. Learned counsel appearing for the 2nd respondent submitted that while receiving the amount from the defacto complainant and while executing the agreement dated 24.6.04, the accused has no intention to repay the amount and the intention was to make believe the defacto complainant and to receive the amount from him. Going by Annexures 1 to 4, it can be seen that the grievance of the defacto complainant is that the amount, which was given to the 1st accused, was not given back as agreed. The other grievance is that though the 2nd accused, who is the petitioner herein, had executed an agreement and that too at the instance of the 1st accused, the amount was not given back as agreed as per the said document. The counsel for the petitioner, on the other hand submitted that those

materials are sufficient to hold that the transaction was only in civil nature and if the amount is not paid as agreed by the accused and as undertaken by the documents, remedy of the defacto complainant is to approach the appropriate civil court for redressing his grievance. Such a dispute, which is essentially of a civil nature, cannot be converted into criminal offence.

9. Learned counsel appearing for the respondent has taken me through Annexure 2 complaint and Annexure 3 final report and stated that there are certain averments to attract Section 420 of IPC. On the other hand, the learned counsel appearing for the petitioner submitted that the allegations contained in Annexure 2 and also in Annexure 3 report are not sufficient to constitute the ingredients of Section 420.

10. In the present case, the allegation is that the petitioner as well as the other accused has committed the offence under Section 420 r/w Section 34 IPC. Cheating is defined in Section 415 of IPC, which says as follows:

> *"Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived, to do or omit to do anything which he would not do or omit if he were no so deceived, and which act or omission causes or is likely to cause*

damage or harm to that person in body, mind, reputation or property, is said to "cheat"."

11. Of course, there are certain averments in those two documents which are nothing but the verbatal reproduction of the words contained in Section 415 of IPC. But conspicuously there is no materials or averments to show that there was any "fraudulent", "dishonest inducement" or any "intention" during the so called transaction. Relying on the decision reported in **Vijaya Rao v. State of Rajasthan** [2005 (7) SCC 69] learned counsel appearing for the petitioner submitted that merely because the expressions "fraudulent" "cheating" etc., contained in Annexure 1 to 3 it cannot be said that the same are based upon any factual foundation. Further in the light of the decision reported in **G. Sagar Suri v. State of U.P.** [2000 (2) SCC 636] learned counsel for the petitioner submitted that this Court while exercising its jurisdiction under Section 482 has expected not to examine the material superficially, but it is to be seen that the matter which is essentially of a civil nature has to be given a cloak of criminal offence.

12. I have carefully perused Annexure 3 final report wherein it is stated that on 19.4.04 at about 3 p.m. in the house of the accused,

the 1st accused has received a sum of Rs.7,00,000/- from the defacto complainant which was then and there handed over to the 2nd accused and it was also agreed that the said amount will be given back within three months and to that effect an agreement dated 26.4.04 was executed in Rs.50/- stamp paper by the 2nd accused. The further case of the complainant is that but contrary to the agreement mentioned therein, the amount was not repaid and thereby the defacto complainant was cheated. Obviously, as stated earlier the above transaction will amount only to a civil transaction and no colour of criminal act can be given to the said civil transaction. It can be seen that the transaction regarding payment of the amount was taken place in the house of the accused and it was the 1st accused, who had received the alleged amount and the role attributed to the 2nd accused is that he had executed an agreement for repayment of the said amount and that too even according to the complainant, the same was executed at the instance of the 1st accused. If there is any violation of the terms of the agreement, the only remedy available is to approach the civil court to redress his grievance, if any, by invoking the civil procedure.

13. Going by Annexure 2 complaint and Annexure 3 report, I

am of the opinion that none of the ingredients of Section 415 is attracted in the present case and therefore the allegations contained in the complaint and in Annexure 3 report does not discloses any offence under Section 420 r/w Section 34 IPC.

14. However, in the facts and circumstances of the case, it appears to me that the transaction involved in the case is purely civil in nature and by initiating criminal proceedings, the attempt of the defacto complainant is to treat the same as a short cut instead of pursuing his remedies available in law. Therefore, I am of the view that the facts and circumstances involved in the case and especially in the absence of any allegations disclosing the offence under Section 420 of IPC, all proceedings in the court below amounts to abuse of process of court. On a close perusal of Annexure 2 complaint and Annexure 3 final report, it is crystal clear that the so called transaction between the accused and the defacto complainant is civil in nature and the same cannot be given a cloak of criminal offence. Probably there may be some transaction between the accused and the defacto complainant. But, on the available materials, it appears that it is civil in nature and such civil dispute cannot be converted into a criminal proceeding as a short cut. Thus

it can be seen that the attempt of the defacto complainant is to unnecessarily drag his opponents to criminal court based upon a dispute civil in nature and therefore certainly the same shall be prevented, otherwise it will amount to abuse of process of court.

15. In the light of the above discussion, I am of the view that no offence under Section 420 is disclosed against the petitioner. Therefore Annexure 3 final report is not sustainable and consequently all proceedings in C.C. 64/05 pending before the Judicial First Class Magistrate Court -II, Pathanamthitta are liable to be quashed. Therefore Annexure 3 and all proceedings pending against the petitioner in C.C. 64/05 before the Judicial Magistrate of First Class Court – II Pathanamthitta are quashed.

Accordingly, the Crl.M.C is allowed.

V.K.MOHANAN, JUDGE

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